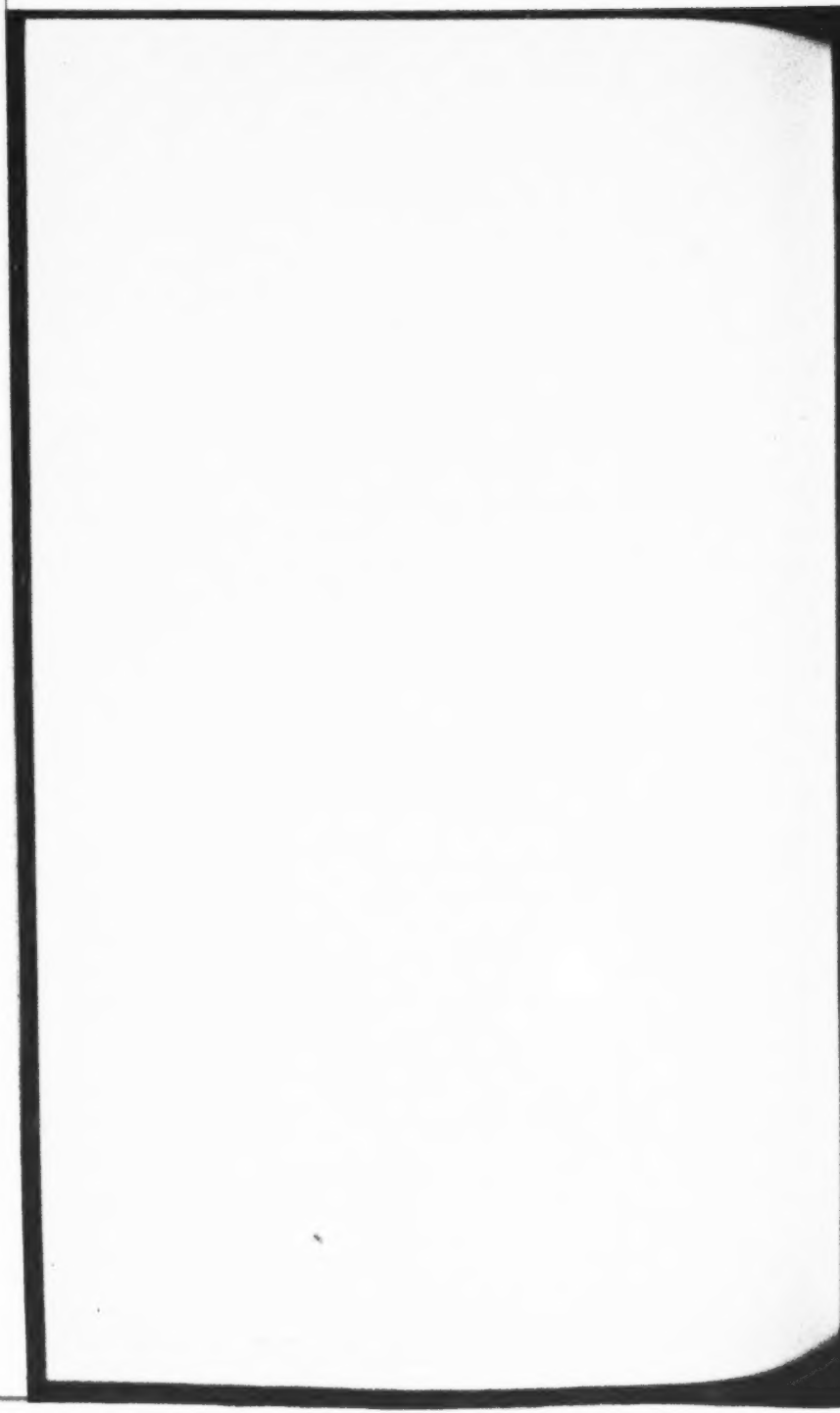

SUBJECT INDEX

	Page
Argument	1
I. The far reaching effect of the decision below cannot be minimized by the bland assertion that the only statute drawn in question in this case is section 20002(a) of the California Vehicle Code	1
II. Compliance with section 20002(a) does not violate the privilege against self-incrimination	2
III. Even if the requirement imposed by section 20002(a) does fall within the scope of the Fifth Amendment, compliance with the statute and evidentiary use of the information obtained is required in the public interest	7
Conclusion	13

TABLE OF AUTHORITIES CITED

Cases	Pages
Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965)	6
Bagley v. Washington Township Hospital Dist., 65 Cal.2d 499, 55 Cal.Rptr. 401, 421 P.2d 409 (1966)	9
Bailey v. Superior Court, 4 Cal.App.3d 513, 84 Cal. Rptr. 436 (1969)	2
Grosso v. United States, 390 U.S. 62 (1968)	6, 7
Haynes v. United States, 390 U.S. 85 (1968)	6, 7
Ex Parte Kneedler, 243 Mo. 632, 147 S.W. 983 (1912)	4
Leary v. United States, 395 U.S. 6 (1969)	6
Marchetti v. United States, 390 U.S. 39 (1968)	6, 7
People v. Christiansen, 308 N.Y.S.2d 755 (1970)	7, 8
People v. Diller, 24 Cal.App. 799, 142 P. 797 (1914)	4
People v. Lucus, 41 Ill.2d 370, 243 N.E.2d 228 (1968)	2, 6
People v. Rosenheimer, 209 N.Y. 115, 102 N.E. 530 (1913)	8
Shapiro v. United States, 335 U.S. 1 (1948)	5, 6, 7
United States v. Sullivan, 274 U.S. 259 (1927)	4

California Codes

California Vehicle Code	
Section 20002(a)	1, 2, 4, 6, 7, 8, 10, 12
Section 23102	12
Section 13353(a)	11

Miscellaneous

McKay, Self-incrimination and the New Privacy, 1967 Sup. Ct.Rev. 193	6

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 75

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

JONATHAN TODD BYERS,
Respondent.

On Writ of Certiorari to the
Supreme Court of the State of California

Reply Brief for Petitioner

ARGUMENT

I

THE FAR-REACHING EFFECT OF THE DECISION BELOW CANNOT BE MINIMIZED BY THE BLAND ASSERTION THAT THE ONLY STATUTE DRAWN IN QUESTION IN THIS CASE IS SECTION 20002(a) OF THE CALIFORNIA VEHICLE CODE.

The far-reaching effect of the decision below cannot be minimized by the bland assertion that the only statute drawn in question in this case is section 20002(a) of the California Vehicle Code (Br. 17-19). Nor can the effect be

minimized by the further assertion that the California courts have decided only that the duty imposed upon a driver to stop and disclose his identity falls within the scope of the Fifth Amendment privilege against self-incrimination.

As the respondent has noted (BR 17-19), the decision below has now been extended to other hit-and-run statutes applicable in cases of accident resulting in personal injury. *Bailey v. Superior Court,* 4 Cal.App.3d 513, 84 Cal.Rptr. 436 (1970). Accordingly, the defects and shortcomings of the decision below have now been extended.

As we noted in our opening brief, all jurisdictions and the Uniform Vehicle Code require a driver involved in an accident to stop and disclose his identity. If the decision below is affirmed, it will seriously hamper the goal of preventing accidents and encouraging drivers to be careful. Accordingly, the far-reaching effect of the decision below, in California and elsewhere, cannot be minimized because the only statute drawn in question in this case is section 20002(a) of the California Vehicle Code.

II

COMPLIANCE WITH SECTION 20002(a) DOES NOT VIOLATE THE PRIVILEGE AGAINST SELF-INCRIMINATION.

Although respondent asserts to the contrary, compliance with section 20002(a) does not violate the Fifth Amendment. The requirement imposed upon all drivers involved in an accident to stop and disclose their identity is not testimonial in nature. Similarly, this requirement does not create a substantial hazard of self-incrimination.

The latter conclusion was earlier reached by the Illinois Supreme Court in *People v. Lucus,* 41 Ill.2d 370, 243 N.E.2d 228 (1968). The fact that the defendant was not charged with another crime arising out of the accident played no

part in that decision. Thus, the respondent's attempt to distinguish that decision must fail (Br. 19).

Recent case law in California also demonstrates the erroneous nature of the decision below and the position taken by the respondent here that compliance with section 20002(a) is testimonial in nature and that it creates a substantial hazard of self-incrimination.

In extending the decision below to the personal injury hit-and-run statutes, the California courts have held that the duty imposed upon the driver to stop and disclose his identity falls within the scope of the decision below, but that the additional duty imposed to stop and render assistance is non-testimonial in nature and therefore not privileged.

The respondent does not appear to quarrel with this distinction. Nor does he take issue with our contention that a driver involved in an accident may be required to stop and to leave his fingerprint, or presumably, too, to be photographed or administered a blood test. Indeed, the respondent concedes, as he must, that the state can require any driver involved in an accident to stop, and that this requirement alone does not fall within the scope of the Fifth Amendment (Br. 49).

If, as respondent concedes, the state can validly require a driver to stop, to leave a fingerprint, or to render necessary aid and assistance, it is difficult to see in what way, if any, the mere giving of a name and address is an additional duty which, in some fashion, is privileged. To permit drivers to stop, disclose their identity and leave, would appear to be a far less burdensome means of accomplishing the purposes of section 20002(a) than to require the driver to stop and be photographed or fingerprinted.

Nevertheless, the court below held, and the respondent now urges, that the privilege is applicable because the state might eventually learn the identity of the driver and thereafter attempt to prove that a crime has occurred.[1] Apart from the fact that the decision below fails to discuss how information provided in compliance with section 20002(a) reaches the appropriate prosecuting official (and the respondent speculates only that the police will "inevitably" be called (Br. 24)), the Court below failed to recognize that there are innumerable statutes which require a similar kind of self-identification. Thus, as pointed out earlier in *People v. Diller,* 24 Cal.App. 799, 802, 142 P. 797, 798 (1914):

> "'. . . persons in charge are required to report accidents in mines and factories. Physicians must report deaths and their causes, giving their names and addresses. Druggists must show their prescription lists. Dealers must deliver for inspection foods carried in stock.'" [Quoting from *Ex parte Kneedler,* 243 Mo. 632, 147 S.W. 983 (1912)]

Similarly, all taxpayers must file a truthful tax return, regardless of the source of their income. *United States v. Sullivan,* 274 U.S. 259 (1927). This kind of self-identification which is similar, if not identical, to the requirement that a driver stop and disclose his identity, has never before been considered to be privileged information.

Indeed, if a contrary conclusion were reached, the government's legitimate need for information would be seriously thwarted, and innumerable regulatory programs would be seriously undermined. The "link in the chain" kind of analysis which has been urged by the respondent throughout these proceedings, cannot be literally applied

---

1. Respondent's assertion that his "criminal conduct. . . ." "*caused* section 20002(a) to be applicable to him" (Br. 36), is inaccurate. Section 20002(a) is applicable to all drivers who might chance to be involved in an accident, regardless of fault.

in a case of this kind. That test has often been considered in the context of the legislative or judicial setting. In such cases, however, official attention has already been focused on the witness by the very fact that he has been called before the Court or the legislative committee. In a case of this kind, however, where the information required is of a neutral nature and required of all drivers who might chance to be in an accident, the same test cannot be literally applied. On the contrary, the government's need for the information must override any assertion of the privilege.

It is for these reasons that *Shapiro v. United States,* 335 U.S. 1 (1948), embodying the "required records" doctrine is relevant to this case. In the *Shapiro* case the Court sustained a conviction for violation of price regulations based in part upon evidence derived from the defendant's business records.

Although the respondent attempts to demonstrate that the facts of this case cannot be "pigeonholed" into the three premises of that decision, the thrust of the *Shapiro* decision was that a witness can be compelled to produce records of the kind he has customarily kept " 'in order that there may be suitable information of the transactions which are appropriate subjects of governmental regulations and the enforcement of restrictions validly established.' " *Shapiro v. United States, supra* at 33.

We cannot regard as serious the suggestion made by the respondent in his brief that the requirements of section 20002(a) do not constitute a legitimate area of governmental concern because only private property rights may be involved in an accident (Br. 41-42). Nor can we seriously regard his further assertion that driving is in some fashion a private activity, for it surely is not. Indeed, we might add that the right to privacy, which has been characterized

as one of the most basic values underlying the privilege against self-incrimination is a value which surely offers no protection to the respondent in this case.[1]

On the contrary, since a driver's name and address is a totally neutral kind of information which must be disclosed by all drivers who might chance to be in an accident, the rationale underlying *Shapiro v. United States, supra,* is fully applicable here.

Nevertheless, the Court below rejected any analogy to the *Shapiro* case on the basis of an unsubstantiated determination that there is a "substantial shadow of suspicion" cast upon persons involved in accidents (A. 64). The respondent now suggests that this determination is binding (Br. 33-34) and, further, that this holding falls within the *Albertson - Marchetti* line of cases.[2]

However, while this conclusion represents an obvious attempt by the Court below to bring this case within the ambit of the *Albertson - Marchetti* line of cases, the standard adopted by the Court was, in fact, new. The Court below did not characterize drivers involved in accidents as "inherently suspect of criminal activities to the same

---

1. McKay, *Self-Incrimination And The New Privacy,* 1967 Sup. Ct.Rev. 193, cited by respondent at pages 29 and 41 of his brief, suggests that of the welter of reasons underlying the privilege, two are paramount. They are: (1) the preservation of official morality; and (2) the right to privacy.

With regard to the first, it is difficult to see in what way, if any, official morality can be undermined by requiring compliance with section 20002(a). If a crime has occurred, the police and the prosecution must still discover and prove it.

Similarly, since driving is so clearly a public activity which can only be carried out on public highways and with regard to the rights and the lives of others, it is difficult to see in what way, if any, a right to privacy can excuse compliance with the state's "hit-and-run" statutes.

2. *Albertson v. Subversive Activities Control Board,* 382 U.S. 70 (1965); *Marchetti v. United States,* 390 U.S. 39 (1968); *Grosso v. United States,* 390 U.S. 62 (1968); *Haynes v. United States,* 390 U.S. 85 (1968); *Leary v. United States,* 395 U.S. 6 (1969).

extent as the groups regulated by the statutes in *Marchetti, Grosso* and *Haynes*" (A. 64). Instead, it stated that "there is in the accident cases, unlike the situation in *Shapiro*, a substantial shadow of suspicion cast upon persons regulated by the statute." This new standard cannot be binding upon this Court, when the issue to be decided is the applicability of the Fifth Amendment to the statute in question.[2]

On the contrary, the decision below represents an unwarranted extension of this Court's opinions. Indeed, one other court has recently agreed with this characterization. Thus, in *People v. Christiansen*, 308 N.Y.S.2d 755, 756 (1970), the Court stated that it considers:

> ". . . the Byers decision an unwarranted extension of the Marchetti rule. The language of the majority opinion in Marchetti does not suggest that it was intended other than to strike down a unique statutory scheme aimed at a limited group of individuals engaged in activities generally illegal in nature."

We urge therefore that the requirement that a driver must stop and disclose his identity does not fall within the scope of the Fifth Amendment privilege against self-incrimination.

III

EVEN IF THE REQUIREMENT IMPOSED BY SECTION 20002(a) DOES FALL WITHIN THE SCOPE OF THE FIFTH AMENDMENT, COMPLIANCE WITH THE STATUTE AND EVIDENTIARY USE OF THE INFORMATION OBTAINED IS REQUIRED IN THE PUBLIC INTEREST.

Assuming arguendo that the requirement imposed upon a driver to stop and disclose his identity does fall within the scope of the Fifth Amendment, compliance with the

---

2. Respondent's contention that this Court is bound by the state court's interpretation of section 20002(a) is not well taken for, at least, two reasons. First, a reading of the opinion below demonstrates that the state court believed that its decision was compelled by the decisions of this Court and not by a reading of law peculiar to California. Second, the state court did not base its ruling upon any evidence, but was ruling solely on the constitutionality of the statute itself.

statute and evidentiary use of the information obtained is required because of the compelling and overriding state interest that is presented by this case.

Although the respondent has characterized this argument as one without any kind of case law support, this was the view adopted in a number of earlier cases (see *e.g. People v. Rosenheimer,* 209 N.Y. 115, 102 N.E. 530 (1913), and represents the kind of approach recently accepted by the Court in *People v. Christiansen, supra.*

It is a conclusion which is required in a case of this kind, dealing as it does, with driver safety and highway regulation. If the state cannot effectively enforce its criminal laws, which under the decision below it cannot, then the deterrent effect which the criminal laws have upon the prevention of accidents and a driver's care on the road, is thereby lost. A state must be able to restrict the use of its highways so that only careful and competent people are permitted to use its roads, and to use whatever measures are reasonable and necessary to insure that all drivers comply with the duties and rules imposed. To require all drivers to comply with section 20002(a) and to require that the information so obtained may be used as evidence, is a reasonable and necessary restriction which may be reasonably imposed upon all drivers using the state highways.

Indeed, it may be concluded that all drivers using the state's highways have given an "implied waiver" to this kind of restriction. Whatever validity a theory of "implied waiver" may have in other cases, it may be legitimately concluded here that a waiver has occurred by any person who drives an automobile. As we noted in our opening brief, the duty to stop and disclose his identity is a duty which has been imposed upon all drivers since the early days of the automobile and recognized as such by all drivers. Based as they are upon humanitarian concepts

and a moral content, there is an underlying sense of "fair play" which impels most drivers to stop at the scene of an accident.

Prior to this case the court below had considered this kind of an approach in determining the applicability of the First Amendment to a state regulation prohibiting the political activities of certain public employees. Thus, in *Bagley v. Washington Township Hospital District,* 65 Cal.2d 499, 505, 55 Cal.Rptr. 401, 406, 421 P.2d 409, 414 (1966), the Court had stated that:

> ". . . we cannot accept the apparent suggestion of some few cases that government may never condition the receipt of benefits or privileges upon the non-assertion of constitutional rights. [citations omitted]. The government employee should no more enjoy the right to wrap himself in the flag of constitutional protection against every condition of employment imposed by the government than the government should enjoy an absolute right to strip him of every constitutional protection. Just as we have rejected the fallacious argument that the power of government to impose such conditions knows no limits, so must we acknowledge that government may, when circumstances inexorably so require, impose conditions upon the enjoyment of publicly conferred benefits despite a resulting qualification of constitutional rights.[3]"

"3. [F]ew if any forms of government benefit are so essential or of such a high order that they cannot constitutionally be conditioned in any way. (O'Neil, Unconstitutional Conditions: Welfare Benefits with Strings Attached, supra, 54 Cal.L.Rev. 443,445.)"

Nevertheless, in the present case, the Court rejected the argument that the state could require compliance with section 20002(a) as a reasonable restriction, because it concluded that by means of the "use-restriction" theory of immunity, the "objective underlying section 20002 of the Vehicle Code can be achieved by a means unoffensive to the privilege against self-incrimination (A 68). At the same time the Court concluded that this would 'neither frustrate any apparent significant legislative purpose nor unduly hamper criminal prosecutions of drivers involved in accidents resulting in damage to the property of others.'" (A 75).

However, in arriving at the latter conclusion, the Court failed to consider that, as a practical matter, the theory of use-restriction may effectively bar the state from enforcing its criminal laws. Since compliance with section 20002(a) must be made on the spot, if at all, the opportunity to produce any kind of independent evidence of the driver's identity is more limited than is ordinarily the case. As we pointed out in our opening brief (Br. 25) even if there are 20 witnesses to the accident, is it still possible to say that the state did not learn the driver's identity because he stopped in compliance with section 20002(a)? In view of the practical difficulties imposed by the decision below, it is small wonder that the respondent is now willing to "concede that the use-restrictions adequately protect Respondent Byers' Fifth Amendment privilege against self-incrimination" (Br. 47).[3]

---

3. In this connection it is interesting to note that in his petition for hearing filed in the state supreme court, the respondent characterized the use-restriction theory adopted by the court of appeal as providing "a person involved in an automobile accident a practical immunity (which he alone may unilaterally create) from prosecution for any offense arising out of the incident by permitting

A case now pending in the Court of Appeal, Third Appellate District, *Leo Cary Lobato v. Stockton Judicial District, et al.*, 3 Civil 12675, serves to further illustrate our point. The facts of that case as set forth in the briefs of the parties are that the petitioner, an unlicensed driver, hit a parked, unoccupied vehicle in Stockton, California. He remained at the scene of the accident, found the owner of the parked car and identified himself to him.

Some minutes later, police officers arrived at the scene, apparently in response to a call. The petitioner identified himself to the police as the driver of the car which struck the parked car and told them that he had been drinking. The officers noted that petitioner appeared to be unsteady on his feet and smelled of intoxicants. When the officers advised the petitioner of California Vehicle Code section 13353(a)—the "implied consent" statute—[4] the petitioner agreed to undergo a blood test.

---

him to comply with the 'hit-and-run' statute, thereby giving information which would furnish a link in the chain of evidence needed to convict him of the offense, and thereby precluding the prosecuting authorities from using any evidence, or its fruits, in the prosecution.

"With such a ruling, neither the public nor the prosecuting authorities can be satisfied."

4. Section 13353(a) provides in pertinent part that:

(a) Any person who drives a motor vehicle upon a highway shall be deemed to have given his consent to a chemical test of his blood, breath or urine for the purpose of determining the alcoholic content of his blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe such person was driving a motor vehicle upon a highway while under the influence of intoxicating liquor. Such person shall be told that his failure to submit to such a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of six months. . . .

After a complaint was filed in the Municipal Court charging the petitioner with a violation of Vehicle Code section 23102(a) (misdemeanor drunk driving), petitioner filed a motion to dismiss. He alleged that disclosure of his name and address to the other driver was supplied by him in compliance with Vehicle Code section 20002(a), and that his statement to the police and the results of the blood test were the fruits of his compliance with that statute. Accordingly, he urged that the complaint must be dismissed because there was no competent evidence upon which the criminal charged could validly be based. Although the Municipal Court refused to dismiss the complaint, these same arguments were presented to the Superior Court in a Petition for Writ of Prohibition where they prevailed. This case thus illustrates our concern not only that a disclosure of identity may be barred from use under the decision below, but that evidence ordinarily considered outside the scope of the privilege, such as the results of a blood test, may now be privileged.

Thus, while the respondent urges that this case has nothing to do with highway safety or driver regulation, (Br. 45) we submit that, on the contrary, this case has everything to do with such matters. If, as a practical matter, the state cannot enforce its criminal laws, then the deterrent effect of the criminal laws upon driver care will be lost. Furthermore, since revocation or suspension of a driver's license may be predicated upon conviction, the consequences of the decision below may be even more drastic than we already believe them to be.

It is for these reasons that we respectfully urge that the decision below be reversed. Neither the Fifth Amendment nor the Court's concept of constitutional "fairness" requires that this respondent be excused from compliance with section 20002(a).

CONCLUSION

WHEREFORE, we respectfully submit that the decision below should be reversed.

DATED: December 1, 1970

THOMAS C. LYNCH,
Attorney General of California

ALBERT W. HARRIS, JR.
Assistant Attorney General

LOUISE H. RENNE
Deputy Attorney General

Attorneys for Petitioner